

October 26, 2022

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

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5 *In Re* FLINT WATER CASES Case No. 16-10444
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8 STATUS CONFERENCE

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10 BEFORE THE HONORABLE JUDITH E. LEVY
11 UNITED STATES DISTRICT JUDGE

12 OCTOBER 26, 2022

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(None)

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(None)

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: All right. Well, thank you, all, for being here. And it's good to see everybody. We have a pretty full agenda for today, so I want to get started right away.

And the first item on the agenda is a report from Deborah Greenspan who's the court-appointed neutral, also known as special master in the case. And so Debbie, if you're ready to get started. There you are. Thank you.

MS. GREENSPAN: Thank you, Your Honor.

I'm -- you've asked me to give a report on the status of the settlement implementation. This will be a brief update.

I think the last time I gave a report, I had mentioned how many millions of documents and pages of documents had been submitted, many towards the end of the settlement claims period and that it was going to take some time for those to be what they called "digitized", basically put into the system. All scanned, all added into the particular claims they belong to. And the data entered into the claims administration platform.

THE COURT: You're muted all of a sudden.

MS. GREENSPAN: Okay. So what I wanted to report is that the data is now all in the claims administration platform. All the documents are in as well. What that means

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1 is that it is now possible for the claims administrator to
2 review all of the claims with the complete data. In other
3 words, you couldn't review them before you had all the data
4 into the system. They --

5 THE COURT: You've gone silent.

6 MS. GREENSPAN: Yeah, I just --

7 THE COURT: Okay. I'm not going to touch my computer
8 at all. And know I would probably be somebody who would give
9 a false confession because as soon as this happens, I'm just
10 convinced I did it, but.

11 MS. GREENSPAN: Okay. So what it means is that we
12 have all the data in the system. The claims are now being
13 reviewed. There was a holdup for a while while the data was
14 being input. But they're now reviewing the claims. And I
15 anticipate that that process will continue for some time.

16 The very next step is that when a claims reviewer --
17 when a group of claims are reviewed, there will be notices
18 sent to claimants. We don't have -- I can't give you a date
19 at the moment when that will occur. But when the notices do
20 go out, if somebody's claim is deficient, then the notices
21 will explain what that deficiency is and what has to be done
22 to cure it if it is a curable deficiency. Some of them are
23 not.

24 But that is the next step in the process. I'm
25 hopeful that we can get that moving pretty soon, but I cannot

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1 give you a date at the moment.

2 I don't really have anything else to report today but
3 I'm happy to answer questions, Your Honor, if you have any.

4 THE COURT: I don't think I do have any questions.
5 It sounds like a very voluminous process and I'm just glad
6 that it's continuing on.

7 And at this point my final approval of the settlement
8 is still on appeal at the Sixth Circuit. So that's also a
9 part of this process that will need to get taken care of. And
10 as far as I know there's not a briefing schedule yet in that.
11 So hopefully that will come about soon so that this entire
12 part of the case can move along in an efficient manner.

13 So unless anybody else has questions for Ms.
14 Greenspan. Okay.

15 Well, let's move on to the second item. And this
16 came from co-liaison counsel and it regards their deposition
17 notice of Veolia's chief communications officer, which is to
18 take place very soon, on November 2 of 2022.

19 And I was informed in the proposed agenda item that
20 VNA had an objection to this based on the timing of
21 Ms. Griffiths' employment. And so I guess I should turn to
22 VNA first to find out if that's still the case and what the
23 timing issue is from your perspective.

24 MR. CAMPBELL: So Your Honor, I hope my internet's
25 working here and that you can hear me. I'm having some

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1 sketchy connections.

2 THE COURT: So am I for that matter. So just start
3 waving if you don't hear me and I'll do the same if that
4 happens to you.

5 MR. CAMPBELL: Your Honor, let me introduce you to
6 Michael Olsen. He's going to be speaking for VNA through the
7 conference. So he's from the Mayer firm in Chicago.

8 THE COURT: Okay. And I was going to do that.
9 Mr. Olsen, I was going to welcome you. And I think we've got
10 Mr. Muha back for a second time. So welcome to all of you.

11 MR. OLSEN: Good afternoon, Your Honor. Thanks and
12 it's a pleasure to. And I will address Ms. Griffiths
13 specifically in one second. I want to back up a little bit.

14 Plaintiffs' counsel is attempting to conduct some
15 pretty broad ranging public relations discovery. They're
16 looking for over a half dozen additional depositions. They've
17 issued a number of third party subpoenas, a number of
18 additional written document requests.

19 What we would ask from the court is permission to
20 file a motion for protective order to address the public
21 relations discovery more broadly rather than continue to do
22 this piecemeal because this is going to be an ongoing issue
23 with respect to a number of upcoming depositions.

24 Happy to address each of the issues on the agenda
25 today. But I think it would be also efficient and helpful if

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1 we could file that motion and maybe even do that in an
2 expedited briefing schedule. We'd be prepared to file it
3 today so Your Honor can address this more broadly.

4 THE COURT: Well, I sort of -- you know, I could tell
5 from these agenda items that there is discovery regarding
6 communications because there are two or three noted on the
7 agenda for today. I was aware of the Chicago northern
8 district -- or Northern District of Illinois in Chicago
9 subpoena matter.

10 And I can tell you generally that the issues that I
11 believe are being explored here are of critical importance to
12 a fair and impartial trial being conducted in February.

13 And so I can just tell you generally that it -- there
14 are some serious allegations raised only at this point from my
15 perspective by a Detroit News article I think on September 8
16 by a reporter. And so and then it was mentioned in some
17 briefing on the motions for sanctions.

18 So other than that, I have nothing further than what
19 a reporter says may or may not have happened and what some law
20 professors and some communications persons think about it.

21 So but the issue that was flagged in that article
22 from my perspective is very serious and worth the Court
23 knowing about. So I can tell you that's my philosophy and I'd
24 like to get started dealing with the November 2 and November 4
25 depositions that are already scheduled.

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1 So why don't you tell me about those. Yes.

2 MR. OLSEN: Your Honor, I'd be happy to. My point
3 was simply there's going to be additional depositions where
4 we'll further disputes on and I thought it would be easier for
5 the parties and the Court just to address it. I'm perfectly
6 happy to address each of the issues on the agenda today as
7 well. I was just asking the Court's permission --

8 THE COURT: Slow down a little, Mr. Olsen. We're
9 still in court with a court reporter.

10 MR. OLSEN: Sorry, Your Honor. I'm absolutely about
11 to address each of the specific PR issues on the agenda today.
12 My point was simply there are a number of additional
13 depositions scheduled. And rather than to keep coming back to
14 Your Honor to address each one separately, we were just
15 seeking permission to file a motion for protective order so we
16 can deal with all of these issues at one time.

17 THE COURT: Well, let's get started because there may
18 be something that we can -- that can be generalized as a
19 result of what -- I don't know what your arguments are on
20 these two. And we can go from there.

21 MR. OLSEN: With respect to Ms. Griffiths, as Your
22 Honor knows, the Court set a presumptive cutoff of January
23 2017 for relevant discovery. Ms. Griffiths is a current VNA
24 employee in communications. She joined VNA in September of
25 2018, several years after any of the events related to the

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1 Flint Water Crisis.

2 She has no personal knowledge about VNA's conduct in
3 Flint. She had a very limited role in anything related to PR
4 with respect to the trial. She certainly doesn't have any
5 personal knowledge with respect to any issues relate to any
6 claims or defenses in the ongoing Bellwether I retrial.
7 Didn't even start with the company after your presumptive
8 discovery deadline.

9 And so we think going to ask her questions beyond
10 that presumptive deadline simply is beyond the pale given that
11 we haven't done a number of PR depositions squarely related to
12 the issues that plaintiffs' lawyers want to explore here. And
13 putting someone in a deposition chair who started after that
14 deadline doesn't make sense to us.

15 THE COURT: Okay. Mr. Stern, this is your subpoena,
16 correct?

17 MR. STERN: Yes, Your Honor.

18 THE COURT: And I assume that you're not asking
19 questions -- hoping to ask questions of Ms. Griffiths related
20 to the water conditions in Flint but rather related to the
21 digital media campaign that may or may not have been taking
22 place during the trial?

23 MR. STERN: Correct.

24 THE COURT: And so Mr. Olsen, from my perspective,
25 the 2017 deadline or date relates to facts and information

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1 involving the water crisis itself and not the conduct of
2 lawyers and parties during the trial. And even looking back
3 at the last trial, is Ms. Griffiths still the communications
4 officer?

5 MR. OLSEN: She is still employed at VNA, yes.

6 THE COURT: Okay. Well, knowing what the issue is
7 now, now that you understand that Mr. Stern isn't looking for
8 whether she knew what Mr. Chen said or Mr. Gnagy said at any
9 given date, he's actually looking at whether VNA undertook a
10 digital media campaign to influence or improperly influence a
11 jury venire, but knowing that that's what he's looking for,
12 the January 2017 deadline has nothing to do with that. So
13 that won't be helpful to this process.

14 And I think it is -- I mean, I will require that she
15 sit for the deposition. If she knows nothing, it will be a
16 very short deposition. She'll just say I don't know what
17 you're talking about. I've never heard of that. And that
18 will be the end of it. And if she knows what's going on or
19 what did happen or is currently happening with respect to a
20 digital media campaign.

21 The allegation -- it's not an allegation. But the
22 subject of the article suggested that VNA was geotargeting zip
23 codes that jurors drawn for the Eastern District of Michigan
24 Southern Division Ann Arbor divisional office would draw from.
25 That's a serious concern and I think it's one that warrants

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1 being explored. So that deposition will need to go forward on
2 November 2.

3 Tell me about the former communications manager Paul
4 Whitmore who's noticed for November 4. I think there was an
5 indication that he had previously been deposed but now there
6 are new topics for exploration with him.

7 MR. OLSEN: Correct, Your Honor. Our issue with
8 respect to Mr. Whitmore's deposition is different. He is a
9 former public relations person for VNA. He left the company
10 prior to 2020. And as you note, he was deposed over two days
11 in January 2020.

12 Your Case Management Order provides that he should be
13 deposed only once absent a showing of good cause. In this
14 particular instance with respect to the issues as you have
15 framed them, plaintiffs indeed have asked Mr. Whitmore during
16 his deposition about VNA's crisis communications, talking
17 points in the 2016, 2017 timeframe about press release.

18 They asked Mr. Whitmore about the
19 VeoliaFlintFacts.com website. They fully explored PR related
20 initiatives prior to January 2020. He's been deposed already.
21 There's certainly not been a showing that there should be good
22 cause for a second deposition of Mr. Whitmore.

23 THE COURT: Okay. That's helpful to know. Mr.
24 Stern, in light of the fact that he left by 2020 and the
25 issues you're focusing on took place in 2022, what would be

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1 the new areas you want to ask him?

2 MR. STERN: There was no -- thank you, Your Honor.

3 There was no inquiry to Mr. Whitmore as to
4 geotargeting, as to -- I don't think anybody in that
5 deposition would have on either side, certainly not from the
6 plaintiffs or from nonparties at fault or non Veolia folks in
7 that deposition, I don't think anybody could have imagined a
8 scenario where the Veolia Flint Facts website, which he was
9 instrumental in, had the capacity through various forms of
10 media and social media to actually target a potential venire
11 of jurors.

12 And so the inquiry would have been limited to
13 targeting geotargeting and the use of that website, which was
14 not something that anyone could have ever known about at the
15 time of his deposition. I would never have imagined anything
16 like what was reported by the media after our bellwether trial
17 would have been the subject of an inquiry during his
18 deposition in 2020.

19 And so I would seek to depose him on the limited
20 areas of geotargeting. I am content, if the Court would
21 permit it, to wait until after Ms. Griffiths' deposition and
22 some of the other depositions to see if there's actually a
23 need for it.

24 But to unilaterally say now in light of the
25 information that came out in that article in September of

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1 2022, well, he's already been deposed about that and there's
2 nothing new to add, you can't depose somebody in 2020 about
3 something you find out about in 2022 even if they're related
4 tangentially. So it's a request to ask him continuing
5 questions beyond what he was asked at his first deposition.

6 THE COURT: Let's -- I'm going to take you up on that
7 offer to first conduct the deposition of Ms. Griffiths and
8 some of the other depositions and then go back. And I would
9 ask that VNA, Mr. Olsen, that you strongly consider producing
10 him if Mr. Stern can say that there is some new area, a new
11 area that he simply didn't know about, couldn't have known
12 about during that timeframe when he was previously deposed.

13 So we'll just assume that it's not going forward on
14 November 4 but that it may very well in the future after some
15 additional discovery is accomplished on this issue.

16 And so now for Mr. DiCroce, D-i capital C-r-o-c-e.

17 MR. STERN: Your Honor, I can just tell you that
18 Veolia has agreed to produce Mr. DiCroce. But we're waiting
19 on a date from Veolia for his deposition.

20 THE COURT: Okay.

21 MR. OLSEN: That's correct, Your Honor. We can take
22 that one off the table.

23 THE COURT: Great. Thank you. Okay.

24 Now we have an issue number 5 which is plaintiffs'
25 counsel co-liaison counsels' objection to Veolia's planned

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1 inspection of homes related to Bellwether III cases. And here
2 I understand what you're objecting to, Mr. Stern, is that if
3 Veolia says your clients had no injuries, what is the point of
4 looking for lead paint because they didn't get exposed to
5 lead.

6 Is that what it is?

7 MR. STERN: It is. And the suggestion is not -- we
8 had a meet and confer about this. And my suggestion is not --
9 or my position is not that they never get to inspect these
10 homes. My position is is that every time they send an
11 inspector to one of these homes -- and there's a lot on this
12 list -- we have to send someone who is an inspector as well to
13 observe the inspection, on some level to conduct their own
14 inspection and just to make sure that our client's interests
15 are represented. And that costs money.

16 And I don't have any reason to believe at this stage
17 that Veolia's opinions and their expert's opinions about these
18 8 or 10 bellwether kids is going to be any different than what
19 they forcefully and on some level successfully argued at the
20 first bellwether case.

21 So why not first make a determination about whether
22 these children are even injured from the perspective of
23 Veolia's numerous neuropsychological experts before putting
24 beyond just us through the rigor of hiring our own experts to
25 go with them on the inspections, but probably more importantly

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1 to put people out of their homes for a day, some of which
2 aren't even parties to this litigation if and only if at the
3 time of the trial Veolia's going to stand up and say that
4 these kids aren't injured. It just seems like a fool's errand
5 and a waste of money.

6 THE COURT: Mr. Olsen?

7 MR. OLSEN: Yeah. A few things, Your Honor. This is
8 what happened with respect to the Bellwether I plaintiffs.
9 This has already begun to happen with respect to some of the
10 Bellwether III plaintiffs. This is just a continuation and a
11 completion of that process.

12 I would make a few points. One, we haven't taken any
13 position with respect to the Bellwether III plaintiffs' health
14 conditions. That's what discovery is for. We certainly will
15 take a position with respect to those health conditions after
16 this discovery is complete. We have not yet --

17 THE COURT: Do you have any objection to doing this
18 at a later point in the process? If you determine that 10 of
19 the Bellwether III candidates have zero exposure to lead, what
20 would be the point of going into their homes for this --

21 MR. OLSEN: There are a few points, Your Honor.
22 First, plaintiffs' expert specifically addressed this
23 question. I'll give you an example.

24 THE COURT: Okay.

25 MR. OLSEN: Dr. Bithoney talks about doing an

1 extensive differential analysis where he conducted what he
2 describes as a significant effort to exclude all possible
3 causes of lead exposure other than the Flint River. We're
4 entitled to evaluate and cross-examine plaintiffs' experts as
5 to whether or not they did do an extensive differential
6 analysis to exclude alternative causes.

7 And these type of inspections and third party
8 subpoenas that could have covered different sources of lead
9 that plaintiffs' experts may have ignored is directly relevant
10 to a cross-examination with respect to their credibility when
11 they say --

12 (Stenographer clarification)

13 MR. OLSEN: Alternative cause. And when plaintiffs'
14 expert say that they've done an extensive differential
15 analysis and study to eliminate potential alternative causes,
16 if this discovery shows there were potential alternative
17 causes that they did not consider, that goes directly to a
18 cross-examination point with respect to their experts.

19 Similarly, Your Honor did limit in the first
20 bellwether trial our experts -- for example, Dr. Finley and
21 Dr. Weed -- in attempting to testify about potential
22 alternative causes because you concluded that they could not
23 testify that plaintiffs' exposure were, in fact, caused by
24 alternative sources other than Flint's water supply.

25 This discovery could enable our experts to evaluate

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1 that very question and have the requisite foundation to offer
2 those opinions this time around.

3 Plaintiffs are certainly taking the position that
4 plaintiffs are injured in this case. To the extent this
5 discovery demonstrates that there are alternative causes here
6 or potential alternative causes, we would use that information
7 most importantly to cross-examine plaintiffs' experts who have
8 taken a direct position on this very question and potentially
9 empower our experts to do the same.

10 Because the expert schedule is so tight and those
11 reports are due and those depositions are upcoming, we need to
12 conduct this discovery to know whether we can evaluate and
13 address those issues in the expert discovery.

14 THE COURT: How many homes are there that you're
15 trying to get into?

16 MR. OLSEN: I don't know how many are completed.
17 It's 10 total. I don't know how many have already been done.
18 Now there are multiple addresses with respect to certain of
19 the plaintiffs. So I don't know what the total number of
20 addresses are. But it's 10 plaintiffs and it happens to be
21 whichever homes they have lived in in the past.

22 THE COURT: All right. Mr. Stern. I mean, I think
23 Mr. Olsen makes some points here that in the exhaustive
24 litigation of this, you would like to spend eight hours in, I
25 don't know, probably 30 homes. People move frequently and --

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1 MR. STERN: Not suggesting, Your Honor, that they're
2 not entitled to do home inspections, but I think that we can
3 narrow the scope of what those inspections are intended for
4 when we first have the opinions of their experts as to whether
5 the kids are damaged at all. There's a fundamental --

6 THE COURT: Let me interrupt. Mr. Olsen, are you
7 saying you can't even produce that report unless you see
8 whether there is lead paint or something?

9 MR. OLSEN: I'm saying two things. First,
10 plaintiffs' experts have already opined on this and said
11 they've done an extensive differential analysis. This
12 discovery, I think, will undermine their opinion and
13 credibility.

14 Secondly, you're right. To the extent our experts
15 are going to offer opinions about potential alternative causes
16 and supply the foundation you found lacking in the first
17 trial, they need this discovery to evaluate that question.

18 MR. STERN: If I may respond? Two points, Your
19 Honor.

20 THE COURT: Okay.

21 MR. STERN: Number one, I don't believe our experts
22 have provided reports on these bellwether children. We're
23 talking about Bellwether III not Bellwether I. And Mr. Olsen
24 in the same way that I was just being criticized for making
25 assumptions about the position that VNA would take at

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1 Bellwether III trial, they're making assumptions about what
2 our experts are going to say about these 10 children as a
3 platform for why they should be able to inspect these homes.

4 Number two, Your Honor's ruling -- and I appreciate
5 that Mr. Olsen is new to the case. Your rulings were not
6 because inspections had not been done. Your rulings regarding
7 the foundational basis was more complex than that. Your
8 rulings were premised on the fact that on the one hand
9 Dr. Finley and Dr. Weed were going to come in and testify that
10 the kids weren't injured.

11 But at the same time they were going to take the
12 position that if they were injured, their injuries were caused
13 by someone else. And so there was no foundational lacking
14 factual basis for them to provide those opinions. Your order,
15 if I read it correctly, was based on the inconsistencies of
16 their various opinions.

17 So again, I think that in order to streamline the
18 litigation to be more efficient in terms of everyone's time
19 and money, it would make sense to first figure out what
20 everyone's position is in terms of experts on the injuries
21 that these kids have or have not suffered and then make a
22 determination about whether inspections need to take place in
23 the homes.

24 You can't on the one hand say Bithoney and Krishnan
25 gave opinions for these 10 bellwether kids and so we're

1 entitled to take these inspections, but on the other hand you
2 haven't yet seen our experts and you don't know what they're
3 going to say so you can't rely on what we did in the first
4 bellwether case.

5 They're relying on the first bellwether case to
6 extrapolate what the opinions of Dr. Bithoney are going to be
7 now. But they refuse to acknowledge or even address their own
8 experts' opinions as to these new kids. I just think it's
9 premature irrespective of what the order says on discovery.

10 THE COURT: Mr. Olsen, why don't we do this. I think
11 you're justified in your request to go into these homes. But
12 I think it would be most valuable to you and to your client to
13 do it after you get plaintiffs' expert report. If you need
14 additional time for your expert to incorporate these
15 inspections let me know. But I'm not inclined to do it at
16 this point before you even see what plaintiffs' expert is
17 going to say about these 10 children.

18 MR. OLSEN: Your Honor, we did just get plaintiffs'
19 expert reports I believe. And I think they are doing similar
20 kind of analysis that we heard in Bellwether I. It's the same
21 kind of conclusions that you heard testimony about in
22 Bellwether I. So I think we are there already, Your Honor.

23 MR. STERN: Mr. Olsen is mistaken. Respectfully, the
24 reports that have been submitted -- we had a deadline of
25 October 21 to submit any new reports for the Bellwether I

1 retrial. And what was served on the defendants were the
2 reports of Dr. Larry Russell as well as a supplemental report
3 from Dr. Bithoney and Dr. Krishnan that simply updated the
4 materials that they relied on in providing their opinions in
5 Bellwether I.

6 So that when Bellwether I retrial occurs, if they are
7 cross-examined about their reliance on certain materials, they
8 have new materials because now there was a new trial that just
9 took place. So they read the deposition transcripts of
10 defendants' experts. They watched some of the trial.

11 Those are all related to Bellwether I retrial. There
12 has been nothing produced to defendants. And again, I
13 understand Mr. Olsen just entered his opinion last week.
14 There's a lot of catching up to do. But there has been
15 nothing served on Bellwether III as to any of those
16 individuals.

17 THE COURT: Okay. Thank you.

18 MR. TER MOLEN: Your Honor, just to clarify, if I
19 may?

20 THE COURT: Yes.

21 MR. TER MOLEN: What we're talking about, Your Honor,
22 are -- this is going back a couple of years. So I understand
23 there's lots of water under the bridge here for all of us.
24 And we actually did receive expert reports from the plaintiffs
25 for all 14 of the initial group.

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1 So we do have, as Mr. Olsen is saying, expert reports
2 for these other, other 10. And Mr. Olsen is accurate in
3 describing. I understand that we will be receiving additional
4 expert reports from plaintiffs or I assume we will --

5 THE COURT: Yeah. I think the Bellwether III expert
6 report cutoff is December 2 of 2022. So let's just wait until
7 we get to that point and then you can begin to schedule these
8 inspections.

9 Now, what are the 75 -- on item 6, the 75 different
10 addresses related to Bellwether I and III that you're seeking
11 third party information on? Well, Mr. Stern, will you
12 describe this a little bit more to me?

13 MR. STERN: I've already told VNA. This isn't going
14 to be a burden on us. If they want -- they want to send
15 requests for lead paint inspections for 75 or so addresses --
16 I think it's actually closer to 80 -- where some of the
17 Bellwether I kids either lived, resided or spent time as well
18 as the Bellwether III kids. I think it's the exact same issue
19 and it's way premature and I think its also contrary to what
20 their experts have said.

21 But these are -- this comes with no costs to my
22 client. This comes with no cost to me. And if their clients
23 wants to pay for records for 75 homes associated with both
24 Bellwether I and Bellwether III, I would rather them spend
25 that money paying people who are injured. But I have long ago

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1 realized that I'm not in control of the strings for VNA. And
2 I think that if they want to spend money on it, then I've told
3 VNA that we will withdraw our objection and they should go get
4 it.

5 THE COURT: Okay. So Mr. Olsen, that's what you'll
6 do? You'll go for these 80 different addresses and the
7 various lead paint inspections and so on?

8 MR. OLSEN: Yes, Your Honor.

9 THE COURT: Okay. So number 7, let's see. Here I
10 have an indication that plaintiffs' counsel intends to file a
11 motion to compel substantive responses from VNA related to
12 Bellwether III's first request to admit and the timing of
13 adjudication, oh, in light of the Bellwether III scheduling
14 order where I think we have a November 18, 2022, cutoff for
15 discovery. Is that what it is?

16 MR. STERN: Yes, Your Honor. So it's twofold. One,
17 we've met and conferred about this issue and there's not going
18 to be an agreement that Veolia respond more substantively to
19 these requests.

20 All of these requests, all of them, every single one
21 is in the vein as the subpoena that was served on Ms.
22 Griffiths as the subpoena that we were hoping to effectuate
23 related to Mr. DiCroce, which they've now agreed to produce,
24 and the gentleman who was already deposed who we're going to
25 put a pin in to see if there's any new information. It's all

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1 about the potential geotargeting public relations.

2 THE COURT: Oh.

3 MR. STERN: When we attempted in Chicago in the
4 Northern District of Illinois to execute a deposition and have
5 the deponent produce documents related to this issue, what the
6 Northern District of Illinois said very strongly was, one, you
7 can depose her. You are permitted [Inaudible] the witness and
8 that's taking place in two weeks.

9 What the Court also said is that you have a direct
10 means to get information about this that's not from a
11 nonparty. It's from Veolia. And so as soon as the Court said
12 that, we served discovery on Veolia for documents and for
13 admissions.

14 And Veolia's argument is -- and this is why we have
15 to file the motion, is that it's not related to a claim or a
16 defense as Mr. Olsen previously said when it came to those
17 various depositions we discussed.

18 So part one is the substance of it, which they're not
19 going to respond is to and that's what the motion will entail.
20 And part two is there's no way the motion will be adjudicated
21 prior to the closure of Your Honor's schedule for November 18.
22 Because even if we were to file it by the end of this week,
23 which we're hoping to based on the timing to respond and the
24 ability to reply, that discovery will come after the deadline,
25 if at all.

1 THE COURT: Well, let me say, Mr. Olsen, I think
2 you've heard my concern about this issue of the digital media
3 campaign. So knowing that, I would ask that you meet and
4 confer a second time. I read Judge Kim's lengthy minute
5 order. I just want you to know we're not allowed to do that
6 here. We can't write out our whole opinion in the docket.
7 That would be so easy. We'd just do it all the time.

8 But I love that he just wrote that up in the docket
9 and put it there and said, plaintiff, you've got to go to VNA
10 for this. Not that it's not important and so on. But you've
11 got to go to a party in the case before you burden nonparties
12 much or somewhat and so on.

13 So you've got Judge Kim on the one hand. You've got
14 my remarks on the other hand. And the fact is what we have
15 here is a very large and complicated piece of litigation. We
16 don't just have Bellwether I, II, III, class, issues. We
17 don't just have that. We have one very big piece of
18 litigation that something of that nature could impact all of
19 that litigation that results in a jury trial.

20 And so I don't think -- first of all, I don't think a
21 November 18 discovery deadline needs to -- that's from my
22 perspective referencing fact and expert specific discovery
23 related to the Flint Water Crisis and not related to the
24 impaneling of a fair and impartial jury.

25 So I just would ask that you look -- I don't know

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1 what are in these requests to admit. But I ask that you look
2 at them and answer them as fully as you can.

3 MR. OLSEN: Your Honor, we'll take your suggestion.
4 We'll take another look at the request to submit given what's
5 taken place in this conference. I would note most of them
6 relate to things like advertisements for the website and not
7 geotargeting. But we will take another look at them and have
8 another meet and confer on it.

9 I'll take one more shot at asking Your Honor whether
10 we could file a protective order on this issue globally
11 because there's going to be a lot of additional depositions
12 with varying degrees of relevance here related to the PR
13 issues. But if you want to piecemeal, that's what we'll do.

14 THE COURT: I think piecemeal will be more effective.
15 And with an eye towards producing the witnesses. If they
16 don't know anything, they don't know anything. And if they
17 do, this is an important area for all of us. Not just me.

18 But we've got Mr. Leopold, Mr. Novak. You know,
19 we've got other -- Mr. Shkolnik. Other lawyers here who have
20 -- will be trying to impanel juries at a later date. And all
21 of this matters to all of us. And it matters to you, too. So
22 you want this issue cleared up as well undoubtedly.

23 So now I have the deposition of Mr. Leo A. Daly.

24 MR. STERN: I can stop up, Your Honor. We've met and
25 conferred and we're working with LAN to figure this issue out

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1 and we can report back to the court in probably a week to 10
2 days but it's nothing Your Honor needs to address.

3 THE COURT: Okay. Thank you. That's always good
4 news. Okay. So number 9, Veolia's topic regarding updates on
5 the Bellwether III plaintiff selection process.

6 MR. OLSEN: Yes, Your Honor. I know you had asked
7 about this in prior conferences. So we just wanted to let you
8 know that we had made a proposal with Mr. Stern about
9 selection. He responded that let's finish up some of this
10 discovery before we meet and confer and see if we can agree in
11 a process to select the bellwethers. And that's what we'll
12 do. And we will continue to meet and confer about it but we
13 wanted to give you an update that that's underway.

14 THE COURT: Okay. So that's underway. And hopefully
15 I won't need to be overly involved in it. And but if so, let
16 me know. Then we have a general issue. It says Veolia's
17 topic of Bellwether III discovery.

18 Is that the two issues that plaintiffs put on
19 earlier?

20 MR. OLSEN: No. That's our issue, Your Honor. There
21 were a number of additional depositions that we need to
22 conduct prior to that November 18 cutoff that you referenced.
23 We met and conferred on some of this yesterday. Mr. Stern and
24 some of his colleagues are attempting to get dates for some of
25 these depositions. We are a little fearful that some of those

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1 deps will go beyond November --

2 THE COURT: Is Mr. Olsen going in and out for anybody
3 besides me? Or is it just --

4 MR. STERN: It did for me as well.

5 MR. OLSEN: I apologize, Your Honor. I guess my
6 internet is a little balky as well.

7 THE COURT: That's okay.

8 MR. OLSEN: So I'll start again.

9 THE COURT: Okay. Thank you.

10 MR. OLSEN: There are a number of Bellwether III
11 depositions that need to be scheduled. Mr. Stern and his
12 colleagues are working on getting dates for us. We're a
13 little concerned that those dates may extend beyond the
14 November 18 discovery cutoff. So we just were seeking some
15 clarity from the Court that to the extent we've identified the
16 deps and those deps extend past the cutout -- cutoff, that
17 we're permitted to finish the discovery that we've noticed
18 prior to the cutoff and we're working with Mr. Stern and his
19 colleagues to get dates for.

20 THE COURT: Okay. And Mr. Stern, you're working with
21 Mr. Olsen and his team?

22 MR. STERN: And there's depositions taking place
23 every day of all of these individuals and witnesses. Right
24 now Ms. Daly is in the middle of a deposition with counsel for
25 Veolia and LAN. And so, yes, even if we -- yes.

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1 And there's some people that they've asked for that
2 aren't represented by counsel. And I've told that to -- you
3 know, just because we represent a child doesn't necessarily
4 mean that we represent a family member who either hasn't seen
5 the child in years or is somehow related to the child whose
6 name came up in another deposition.

7 So to the extent we have any control over our own
8 clients, we're getting them dates. And to the extent that we
9 don't represent them, we've let Ms. Devine and her team know
10 that they should take whatever action they believe is
11 necessary to compel the deposition of who are essentially
12 nonparties.

13 THE COURT: Okay. My internet says -- is sending me
14 messages that it's unstable. So I'm just going to keep going
15 here. Okay. So thank you for raising the issue, Mr. Olsen.
16 And I'll just be aware of it -- November 30 at 1:00 PM.

17 (Technical difficulties)

18 (Stenographer clarification)

19 (Pause In Proceedings)

20 THE COURT: Okay. Hopefully I'm on a different
21 pathway now. Okay.

22 So we're going to have our next status conference on
23 November 30 at 1:00 PM. And that is a Wednesday. And so if
24 some of these issues are still ongoing or need the Court's
25 attention, they can be discussed at that time. But I know

1 there's a discovery cutoff between now and then, so reach out
2 if you need to.

3 I want to move next to the eleventh issue, which is
4 Veolia's topic regarding the joint submission on certified
5 issues. And I appreciate that you brought that to my
6 attention.

7 What happened is we had a five and a half, six month
8 trial, then I had a brief absence. And I have been doing
9 everything humanly possible to focus on the 300 other cases I
10 have to get them in shape to go back into this trial. So I
11 apologize for the delay in getting to this.

12 But I looked at your submission. And as I understand
13 it, the certified issues 1 and 2, there's agreement between
14 both defendants and class plaintiffs. And just for anybody
15 observing this, we're now moving into an issue regarding how
16 to define the issues that will be decided in the first class
17 trial. There's agreement that issues number 1 and number 2
18 are questions of law for the court and not for the jury.

19 And so I agree. I appreciate that the -- I've
20 learned a great deal about the case since making that decision
21 now I think two years ago almost. So I absolutely agree that
22 those are questions for the Court.

23 How they are decided, there are a couple of options
24 for -- they can be decided on summary judgment if summary
25 judgment is filed. If not, a motion in limine would be

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1 appropriate. Or just, you know, submit an issue that now is
2 the time we need to decide the issue of duty.

3 And here's what I can tell you. The Lee decision,
4 the LAN, and the VNA summary judgment decisions required a
5 great deal of research and thought. I don't see any reason
6 that I would deviate from that in this instance. But if there
7 are certain proposed members of the class that you think
8 wouldn't be covered by the Lee decision in those two summary
9 judgment decisions, I have one billion percent confidence that
10 VNA and LAN will bring that to my attention.

11 So I don't think I need to come up with the
12 definition of -- the precise wording for issue. You're going
13 to submit a brief to me saying there is no duty. And to the
14 extent there is, this is what the duty is. So those two are
15 now out.

16 On issue 3, I agree that we can write this in a more
17 concise manner. And I would adopt I believe this is -- it may
18 be VNA and LAN's definition. But it's, "Did either defendant
19 VNA or LAN breach their duty of care?" Period. So that will
20 be the first issue for the jury.

21 The next issue is going to be, "If a defendant, VNA
22 or LAN, breached its duty of care owed to class members, did
23 that breach contribute to causing or prolonging contaminated
24 water conditions in the Flint water distribution system?" We
25 learned in the bellwether trial and in the Daubert motions

1 leading up to it that all water is corrosive.

2 So VNA and LAN had suggested unduly corrosive.
3 Unduly seemed a little bit like where does that start and
4 where does that stop and it's not a word that jurors probably
5 use regularly. So I just substituted "contaminated water
6 conditions". That covers legionella, lead, fecal coliform,
7 and all of the other contaminants.

8 And the next question is -- here's where the parties
9 disagree. What I certified was duty -- which we know is a
10 legal question -- breach, and general causation. That's what
11 the class opinion that the Court of Appeals did not disturb
12 addressed.

13 And so it's my opinion that -- the assistance that
14 the class vehicle provides is numerosity, commonality, all of
15 those things that these issues to the extent they can be
16 decided should be decided. And so I think a general causation
17 question is -- can be decided. So I have rewritten it to
18 "Were the contaminated water conditions capable of causing
19 harm to Flint residents, properties, property, and
20 businesses?"

21 But here's where I think it's important for class
22 plaintiffs to notify me and the defendants of what types of
23 harm your expert thinks can be caused by the contaminated
24 water conditions. That way defendants are on notice.

25 And they raised with me, well, maybe there's a due

1 process by an unnamed plaintiff who is going to say hangnails
2 are a part of this or going to have something. Or just
3 something that like cataracts or something that we know isn't
4 caused by this contaminated water, that they would have some
5 due process issue. But we can't evaluate that without knowing
6 what types of harm your experts want to put forward.

7 So I'll set up a briefing schedule after this to just
8 know generally. I don't need the expert report until it's
9 due. But I'd like to know generally and I think the
10 defendants should know generally what types of general
11 causation conditions you're going to raise.

12 Then the next one will be, "Did any nonparty breach a
13 duty of care owed to class members? If yes, did that breach
14 contribute to causing or prolonging the contaminated water
15 conditions in the Flint water distribution system?"

16 Now here I guess there's still a question of whether
17 percentages make sense to be offered here. I guess I didn't
18 address that in my own thinking. Let me just look.

19 Tell me, Mr. Olsen, why didn't you want the
20 percentage of fault to be attributed at this stage?

21 MR. NGUYEN-DANG: If I may handle that, Your Honor?

22 MR. OLSEN: Yeah, go ahead.

23 THE COURT: Oh, okay. Hello. How are you.

24 MR. NGUYEN-DANG: Doing well. Thank you. Good
25 afternoon, Your Honor.

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1 I think as we recognized during the first bellwether
2 trial, the percentage allocation of fault was individualized
3 or is individualized because it depends on the particular
4 circumstances of each person, their injury, their alleged
5 injuries, when they were exposed to water, so on and so forth.
6 And so in Bellwether I, we had -- the verdict form actually
7 passed for the jury to allocate fault for each plaintiff.

8 THE COURT: It did.

9 MR. NGUYEN-DANG: And so that indicates that the
10 ultimate allocation, percentage allocation, is not a common
11 issue. And so we asked ourselves -- and this is something
12 where I think as you noted that the Sixth Circuit's got into
13 this, well is there something sort of before then that we
14 could try to do on a class-wide basis, an intermediate step
15 perhaps? And we just don't think it's workable.

16 I mean, I think fundamentally the best we could come
17 up with is some sort of grid where you'd start say on April
18 2014. And you'd say all right, between April 2014 and then
19 whatever the next important date is, here's the allocation of
20 fault for whatever injuries occurred during that period. And
21 then you would sort of do that for every single period between
22 April 2014 and I guess the end of the crisis.

23 And those periods, they could be days apart, they
24 could be weeks apart, they could be months apart, that just
25 seemed really complicated for a jury to fill out.

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1 THE COURT: Yeah.

2 MR. NGUYEN-DANG: And then for a second jury to go
3 and try to apply that grid to the circumstances of an
4 individual person, it just didn't seem like it was workable.
5 So that's why we thought that -- and we agree with your
6 position, right. Anything that can be decided in a common
7 basis in an issue class trial, we should try to do that. We
8 just didn't think that percentages was going to be feasible.

9 THE COURT: I agree. Because if, for instance,
10 somebody wasn't -- didn't live in Flint until close to the
11 time that VNA arrived, then something that the emergency
12 manager did at that time prior to that, I suppose it may
13 have -- the jury could find that it caused the problem that
14 they then interacted with.

15 But who's responding for plaintiffs, class
16 plaintiffs?

17 MR. LEOPOLD: I am, Your Honor. Ted Leopold for the
18 record.

19 THE COURT: How do you -- respond to what
20 Mr. Nguyen-Dang just said, please.

21 MR. LEOPOLD: The issue, I understand the issue and I
22 realize it's not an easy issue. Alternatively I'm not sure
23 what the answer is other than doing this in the liability
24 phase. I think by doing it in the --

25 THE COURT: Well, this is the liability phase.

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1 MR. LEOPOLD: Right. But I understood
2 Mr. Nguyen-Dang to talk about not doing it in the liability
3 phase but perhaps the damage phase I guess.

4 THE COURT: Right. Yeah.

5 MR. LEOPOLD: And doing it in the damage phase I
6 think would even be more convoluted and difficult. Because
7 for a jury to determine comparative fault, if you will, that
8 really goes to the issue on the liability side. And those are
9 going to be the facts that are going to be tried during the
10 issues only trial.

11 THE COURT: Oh, I see. So let me stop you. I think
12 that's a really important point.

13 So Mr. Nguyen-Dang, how do we avoid what Mr. Leopold
14 is suggesting, which is that the damages phase would have to
15 retry liability all over again?

16 MR. NGUYEN-DANG: I think it would be a much more
17 streamlined presentation. I mean, the point -- the certified
18 or the -- sorry, the common questions would get us to which
19 universe of people are we even looking at, right. Because
20 only those people to whom the issue jury -- sorry, the issue
21 class jury said yes to would even be considered.

22 And then I agree there would probably have to be some
23 presentation of evidence as to that person's conduct. But it
24 could be targeted or streamlined to the circumstances of the
25 individual plaintiff.

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1 So for example, in the example that you gave, Your
2 Honor, if we know that someone left Flint by a certain date,
3 then we only really have to worry about the conduct up to that
4 date, for instance, and we wouldn't have to worry about all
5 the rest.

6 I agree that it's not optimal. But we just really
7 didn't see path to avoiding -- to avoiding that sort of
8 presentation altogether simply because ultimately the ultimate
9 allegation needs to be individualized.

10 THE COURT: Ms. Levens.

11 MS. LEVENS: Your Honor, I just wanted to add one
12 thing. I think this Sixth Circuit's decision on the 23(f)
13 petition provides some useful instruction here. There they
14 talk about how some of these issues could essentially lay out
15 a timeline that would guide in deciding comparative fault and
16 possibly even identify water shed events caused by the
17 petitioners and third parties, which would then streamline
18 subsequent things by --

19 (Technical difficulties)

20 (Stenographer clarification)

21 THE COURT: I can summarize. What Ms. Levens said
22 when the audio was unavailable to the court reporter was that
23 the Sixth Circuit opinion on class certification can serve as
24 a guide for us that they instructed. And I regret not
25 re-reading it this morning. I re-read my own decision, but

1 not theirs. That we may be able to sort out a timeframe
2 during which other parties -- the jury would determine that
3 other parties had responsibility.

4 So this is what I'm going to do. I'm going to change
5 it because I think that's critical to do at this stage if we
6 possibly can. So we're not writing the jury instruction right
7 now. We'll have some time to do that. But this time we'll
8 have that jury instruction before the opening statements.

9 And so I will include, "If, yes, what percentage of
10 fault is attributable to each nonparty?" Plaintiffs have it,
11 "What percentage of fault is attributable to defendants?" But
12 we want to know what role for City of Flint, what role for
13 MDEQ, and so on at this phase. And I think what we have to do
14 is what Mr. Nguyen-Dang and Ms. Levens is sort of pointing to,
15 which is make sure that there's a timeframe.

16 Because Governor Snyder didn't know about certain --
17 there's only a certain date by which he's informed. And I
18 don't know exactly what -- if that's true. Never mind. But
19 there are definitely people who worked in office as emergency
20 managers who can't be held responsible for the time period
21 before they were there.

22 So I think we'll be able to come up with a chart that
23 says our best estimate of when their reliability or
24 responsibility would start and end. But to that end I want to
25 hear from defendants.

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1 I'll set a briefing schedule now about which
2 nonparties. You don't have to give me the percentage because
3 the evidence may change that. But I want to know who, going
4 into this trial, you believe are the nonparties at fault.
5 Because then that permits everybody to prepare their opening
6 statement, their evidence and so on with that knowledge.

7 And then the last one were the harmful water
8 conditions in the Flint water distribution system a natural
9 and probable result of either VNA or LAN's breach. So I don't
10 know if these are the right -- if this is the right order. We
11 may want the nonparty issue after that. But we have time to
12 figure out what order these should be in.

13 So that's -- I'm just issuing an oral decision in the
14 interest of expediting this process. And it just changed. So
15 that's what the issues will be.

16 And I want to add -- okay. So we have the November
17 30 -- okay. I received a motion this morning -- let me see
18 what it is called. It is -- or last night. Yesterday
19 sometime. It's ECF number 988 in the 17-10164. And it's
20 Veolia's motion to strike the expert reports of Dr. Larry
21 Russell and Dr. Edward Hoffman.

22 And here's what I can offer you on that. I don't
23 need a response and I'm prepared -- I have read it and I'm
24 prepared to make a decision, which is as follows. And
25 Mr. Olsen, let me -- I mean you're a complex litigation guy --

1 oh, no. Jeseca's frozen again.

2 MADAM COURT REPORTER: I'm here.

3 THE COURT: Oh, ready to go?

4 MADAM COURT REPORTER: I'm here, Judge.

5 THE COURT: Oh, this must be a delayed -- I must
6 have -- that's a delayed -- okay.

7 Here's a situation. We have a bellwether -- this
8 is -- I mean, I was mentioning earlier and we all know this.
9 This is a large piece of litigation. What we're doing with
10 these bellwethers trials is trying to move a very large
11 boulder up a hill to figure out what is the likelihood of
12 success for plaintiffs' claims. And if they are successful,
13 what is the type of damages that the jury will award.

14 Certainly you're absolutely correct with your motion
15 that this is a retrial of Bellwether I. But we can't lose
16 sight of what we're trying to do. We're not just trying to
17 retry Bellwether I all on its own just because that would be
18 an excellent exercise for all of us to undertake. We're doing
19 it for a reason. What is the reason? The one that I just
20 said.

21 So the idea that the record -- I think they're out of
22 circuit cases -- that the record can't change on a retrial, I
23 don't -- that could apply in those courts in those circuits
24 for a criminal case, for example, where there's a hung jury.
25 But here we have a different purpose here. We're not just

1 trying to -- we're trying to figure these cases out.

2 And we went -- I'm sure you are aware what we went
3 through to get Mr. Humann here. I'm not doing that again. He
4 has a right to move on with his life. He signed up -- I don't
5 think he signed up for a life tenure position with plaintiffs.
6 He's gone. We don't have him anymore. So we're going to have
7 Dr. Russell because it will be of no value to moving the
8 litigation forward to not have somebody in that position.

9 And Dr. Hoffman as well. Some weeks ago I asked
10 everybody to say do you need new people? If so, who? So that
11 I knew what was going to shift, what kind of Daubert practice
12 there would be so I could build that into the schedule. And I
13 wouldn't have asked if you were all confined to the ones that
14 you had.

15 The other thing with Hoffman is I specifically didn't
16 let plaintiffs add him to Bellwether I because the request
17 came too close to the start of the trial for you to be able to
18 consider rebuttal testimony to his additional reports. But we
19 have time. We have time. So your motion is denied for those
20 reasons.

21 MR. OLSEN: Thank you, Your Honor. And you're right,
22 I am a complex litigation guy.

23 THE COURT: Yeah.

24 MR. OLSEN: And I understand your point. Our point
25 was simply you certainly, of course, have discretion to allow

1 new witnesses where appropriate. But if you look at those
2 reports, this is -- plaintiffs are attempting to conduct a
3 fundamentally different trial than Bellwether I with
4 fundamentally broad reaching issues. And that's not
5 consistent with the discretion that the Court typically has.

6 I agree and see this all the time where you get a new
7 witness because another witness cannot show up or you're
8 adding new evidence in a limited way. But to dramatically do
9 a new trial as opposed to a retrial of Bellwether I does not
10 seem consistent with what the legal standards are.

11 THE COURT: Well, I think it is consistent with what
12 we're trying to do is with the bellwether process. I think it
13 is consistent. And substituting Dr. Russell, who you've known
14 of this whole time because you already wrote a Daubert motion
15 two years ago to strike his testimony. So it's no surprise to
16 Veolia. And the Daubert -- it's already written. You can
17 just, you know, put on a new date.

18 But and I'm just going ask you again, with the
19 Daubert motion practice -- and I'm not singling you out,
20 Mr. Olsen. I appreciate meeting you and having your degree of
21 expertise brought to all of this with all of these experienced
22 lawyers.

23 But take a look at the decisions that I made in
24 Bellwether I. Do not re-file -- if you want to just file a
25 notice that we adopt what we did in Bellwether I. We

1 understand the Court's decision. We're not going to ask you
2 to do it again. Because we all -- we need to move this
3 process forward. And we can't have extreme motion practice
4 which just paralyzes everyone, so.

5 MR. OLSEN: Your Honor I hear you. What I think we
6 intend to do is something like what you just suggested.

7 THE COURT: Okay.

8 MR. OLSEN: Which is make a filing that says we
9 understand Your Honor has ruled on the following things. And
10 if you'd like to reconsider them, we'd be happy to argue them.
11 But just to make our record, we will probably file something
12 that just gets clarification that you're going to rule the
13 same way on the following issues.

14 THE COURT: Okay. Thank you. Okay. I think that's
15 all I had. Is there anything --

16 MR. OLSEN: Your Honor, I had one more issue just to
17 put on your radar. Because you're right, that there's going
18 to be a lot of things going on between now and November 30.

19 As Mr. Stern noted, we got some supplemental expert
20 reports for Bellwether I that we just talked about. And there
21 is some testing that's been done by Dr. Russell in particular
22 on some of the pipes and other plumbing fixtures. And we have
23 asked for -- we don't think that was done appropriately. We
24 weren't notified of any of that testing.

25 But before we are going to take any issue with

1 respect to it, we've asked to get that material that was
2 tested and any data or analysis. We're trying to work that
3 through with plaintiffs' counsel. They've said we're going to
4 get some information. And so we're evaluating that in
5 realtime. I'm just alerting that because of the deadlines we
6 may be coming back to Your Honor prior to the next status to
7 seek some relief.

8 THE COURT: Okay. Thank you. Okay. Anything else?

9 MR. NGUYEN-DANG: One more thing, Your Honor, if I
10 may?

11 THE COURT: Sure.

12 MR. NGUYEN-DANG: This is related to something that
13 you just indicated about the Dauberts. I just -- for purposes
14 of the Bellwether I retrial, could we also assume similarly
15 for Your Honor's motion in limine rulings and summary judgment
16 rulings that we should assume that you will adopt them all?
17 We may, of course, have to make a record about that. But
18 we'll assume that you will adopt them all subject to if we ask
19 for reconsideration it will be on specific points or obviously
20 if the evidence has changed or something like that.

21 THE COURT: Correct. I think that's a very good
22 approach.

23 MR. NGUYEN-DANG: Very good, Your Honor. Thank you.

24 THE COURT: Good. And hopefully the Sixth Circuit
25 will have an opportunity to rule on the Fifth Amendment issue.

1 Maybe, maybe not. We'll find out. But I hope that they will.

2 Okay.

3 Well, thank you, all, for being here. I appreciate
4 it. And I'm sorry I was going to conduct a follow-up meeting.
5 But I am not able to do that. So I'll get that scheduled.
6 That was going to be on just one or two additional details
7 about the retrial.

8 I have notes from it here. And one of them was the
9 time limits I would be putting on the parties. And what I
10 have done, just so that you know, I've gone back through the
11 record and determined that plaintiffs' case took about 138
12 hours. And that includes cross-examination by defendants.
13 VNA's case in chief lasted 68 hours. And LAN's 9 hours.
14 That's a total of 195 hours.

15 And I'm looking at focusing on getting this done in
16 under a total of 140 hours. But of course the hours of
17 cross-examination during defendants' case and during
18 plaintiffs' case wouldn't count against the party doing the
19 direct exam. So just know that I'm working on that and have
20 not yet gotten to where I want to with a little protocol of
21 how the whole thing will work.

22 MR. CAMPBELL: Your Honor, this is James Campbell. I
23 was wondering if you've given any thought to the trial day for
24 retrial.

25 THE COURT: The February 23 date?

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1 MR. CAMPBELL: Yes. The trial day.

2 THE COURT: Oh, the trial day. I have given a lot of
3 thought to it. But I keep coming back to the same either 9:00
4 or 8:30 to 2:00. But I'm hope. Once we get a time slot to
5 talk informally, I'm open to ideas.

6 The problem is with a trial that lasts more than two
7 weeks, I have to have afternoon time to run the criminal
8 docket and the rest of the civil docket. I'd love it if we
9 could get in here and work all day, but I don't know how I
10 cannot violate the speedy trial clock and do that, so. But
11 please make recommendations when I do reschedule that meeting.

12 Which maybe what we'll do is we'll just do it on --
13 see the problem with November 30 is there's a criminal docket
14 in the afternoon. But we'll figure out a time to get it
15 scheduled.

16 MR. SHKOLNIK: Judge Levy.

17 THE COURT: Yeah.

18 MR. SHKOLNIK: This is Mr. Shkolnik. It's been a
19 long time since I've had a chance to speak before you.

20 THE COURT: Yeah. Nice to see you.

21 MR. SHKOLNIK: Regarding the idea of the stop clock
22 trial, recently in our opioid bellwether before Judge Polster,
23 he very effectively set a protocol in place for that
24 bellwether trial. I think his was 50 per side if I'm not
25 mistaken. But he had procedures regarding how the stop clock

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1 works. And it was -- it actually went faster than everyone
2 thought it would. And it was very effective. And he actually
3 has a protocol in place. If you'd like, we'd be happy to
4 provide that.

5 THE COURT: Could you?

6 MR. SHKOLNIK: And there's a couple of others that
7 we've recently had.

8 THE COURT: I talked to Judge Polster while the jury
9 was deliberating and he mentioned that but I didn't get his
10 protocol. And I talked to Judge Breyer here in Detroit last
11 week about his opioid case. But it was a bench trial.

12 MR. SHKOLNIK: Yes.

13 THE COURT: But he gave me some tips. And I've got a
14 meeting set up with Judge Orrick to talk about his recent
15 concerns about his litigation of the JUUL smoking device.

16 MR. SHKOLNIK: Yeah. The one that just got put off.

17 THE COURT: Yeah.

18 MR. SHKOLNIK: I think there may have also been one
19 down in the 3M but I could be wrong on that one. If it's okay
20 with the Court, we would get a copy of whichever orders are in
21 place and just submit them with everyone on notice so you can
22 see the alternatives that are out there.

23 THE COURT: I'd love that.

24 MR. OLSEN: We haven't done one in 3M yet, Hunter.

25 MR. SHKOLNIK: Okay.

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1 MR. LEOPOLD: Your Honor, could I just -- I'm sorry,
2 Hunter. I thought you were done.

3 THE COURT: Go ahead.

4 MR. LEOPOLD: Your Honor, just to clarify, I'm not
5 sure I heard correctly because I may have wiped out a little
6 bit on the computer. But when you were talking about time for
7 the bellwether trials, on cross-examination, at least in my
8 experience doing it on a time basis, that counts against the
9 party doing the cross-examination.

10 THE COURT: Correct.

11 MR. LEOPOLD: Was that your intent?

12 THE COURT: Yeah. Absolutely.

13 MR. LEOPOLD: Thank you.

14 THE COURT: Yeah. Absolutely. I don't know much
15 about sports. But like I'm not going to allow someone to run
16 the clock or whatever they call it. Run out the clock.

17 MR. LEOPOLD: Very good.

18 THE COURT: Okay. All right. Good to see everybody.
19 Take good care and I will see you soon.

20 (Proceedings Concluded)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Jeseca C. Eddington, Federal Official Court Reporter, do hereby certify the foregoing 51 pages are a true and correct transcript of the above entitled proceedings.

/s/ JESECA C. EDDINGTON
Jeseca C. Eddington, RDR, RMR, CRR, FCRR

11/04/2022
Date